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## SHOULD THE GOVERNMENT OWN THE RAILROADS? \*

The form of the statement, "Should the Government Own the Railroads?" primarily suggests the question whether it would be wise and expedient for the national government to own and operate the railroads of the country; and yet it is broad enough to include the inquiry whether the trend of events does not point to such ownership as requisite for the protection of the public welfare. In other words, is governmental ownership of the railroads either desirable or inevitable?

Early in the sixteenth century the art of printing from movable type, which had been invented in the preceding century, came into general use. The adoption of this means of rescuing learning and diffusing knowledge introduced a tremendous force. The power of communication by means of written language was not only restored but vastly enlarged. Then began to flow those streams of modern progress whose currents are still moving, and then was afforded opportunity for the operation of those causes which have sufficed to advance civilization more in the last three hundred years than in all the centuries that had preceded.

Commerce, however, was still confined because no advance had been made in the character of the motive power applicable to the instruments of transportation. As in the earliest days, transportation still depended upon muscular force, or the currents of the air.

At the beginning of the nineteenth century roadways had been constructed and waterways improved in England and the Continental States of Europe to an extent perhaps sufficient to meet the demands of traffic as it then existed.

About the close of the first quarter of that century so-called railways began to be constructed both in England and America. These, however, were merely tramways for the operation of

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coaches over metal rails by animal power; intended merely as feeders for canals and waterways, But a great change was impending.

In the year 1829 Stephenson constructed the first successful locomotive. This was the famous engine Rocket, which, while almost ludicrous in appearance to modern eyes, was the unpretentious forerunner of the ponderous Mallet Compound of the present day. A speed of twenty-nine miles an hour was attained; and the practicability of mechanical traction was demonstrated. A new era in the progress of civilization had begun. Commerce was unfettered, and began its spread over all the earth even as the waters cover the sea. A revolution had been accomplished.

Preceding the advent of the locomotive the sparse population of the United States was scattered over a wide territory, with a vast expanse of continent yet unconquered. The youthful energies of the people were devoted to exploiting the abounding wealth of nature. To the west of the Alleghanies lay an empire inaccessible to commerce because of the lack of efficient means of transportation. No great rivers connected the Atlantic coast with the interior beyond the mountains. The Appalachian chain, extending from the borders of Canada into the far South, presented an impassable barrier to the construction of artificial waterways, with the exception of a connecting link between the waters of the Great Lakes and those of the Hudson River. The task of providing adequate means of transportation was a stupendous one, but the need was imperative, and its accomplishment was valiantly undertaken. Turnpikes or toll roads began to be constructed across the Alleghanies both by private enterprise and with the aid of public funds. In Pennsylvania alone more than one hundred companies had built nearly two thousand five hundred miles of toll road. The celebrated Cumberland road, or "national pike," extending from Maryland through Pennsylvania and Ohio into Illinois, was constructed and owned by the federal government. The State of New York had completed the Erie Canal in 1825.

When the construction of railways began it was assumed that the company would simply own the roadway over which the carriers and others would operate their own vehicles upon

payment of reasonable tolls, as had been the custom with turn-pikes and canals. The vast potentialities of railway transportation had not been perceived, nor had the exclusive nature of railway operation been reckoned with.

The Baltimore & Ohio Railroad had been chartered in 1827, before the success of the locomotive had been established; and on July 4th, 1828, Charles Carroll, then the only living signer of the Declaration of Independence, drove the first spike on this historic road. The charter of this company, as well as that of the Georgia Railroad and other railway companies, contemplated and provided for the use of the tracks by the vehicles of other persons. The original railway companies, both in England and America, were not common carriers; the railroad being considered merely an improved type of the old toll road. In England the railroad was first limited to the charging of an established toll for the use of its tracks. This was followed by the railway company's supplying the motive power, for which it was permitted to charge an additional locomotive toll, the shipper or the carrier still supplying the coach. It was not until some years later that Parliament authorized the railway companies not only to provide motive power for use by other persons, but also to employ such engines themselves, "and in carriages or wagons drawn or propelled thereby, to convey upon the said railway all such passengers, cattle, and other animals, goods, wares and merchandise, articles, matters and other things as shall be offered to them for that purpose." For this service an additional charge was permitted. Thus by gradual approach the railway company evolved into a common carrier. In America the process was similar, but more rapid. Generally speaking, it may be said that in the early forties the railway companies had undertaken the occupation and assumed the legal status of common carriers; and appropriated to themselves the exclusive operation of their lines.

The whole relation of the railways to the State thus became changed. It cannot be doubted that the business of transportation is essentially a governmental function. In recognition of this principle the charges and practices of common carriers have from time immemorial been subject to control and regu-

lation by the State, in countries where the common law prevails. They were required to carry for all without unjust discrimination or undue preference, and at reasonable charges. If this was necessary to protect the public interest in the early days of common carriage, how much greater is that necessity now when giant corporations have acquired dominion over commerce and, but for the restraint of the law, would hold the people at their mercy. Mr. Justice Shiras has aptly said that while shippers of merchandise are under no legal necessity to use railroads, practically they are. The demand for speedy and prompt movement virtually forbids the employment of slow and old-fashioned methods of transportation. From the very nature of the case therefore, railroads are monopolies. (*Texas & Pacific Ry. Co., vs. Interstate Com. Com.* 162 U. S. 197.)

For the construction and operation of railways public franchises are granted, which permit the exercise of sovereign powers and the employment of governmental functions. It is only the public nature of the business that justifies the delegation of the power of eminent domain. Railway companies are not only entitled to charge tolls for the use of the facilities provided for transportation, but they are permitted to exact rates for the service rendered by them as common carriers. The distinction between rates and tolls is well worth noting. A toll is a charge for the use of the facilities provided, and is in a large measure based upon the weight and bulk of the vehicle or the commodity transported. Rates, on the other hand, are levied with greater regard to value, and the ability of the customer to pay, than to weight and bulk. Thus articles of light weight and high value are subjected to much greater rates than low grade commodities of large bulk and low value. Traffic officials will say that this is as it should be, since the value of the service is much greater with respect to high class articles than low grade commodities. This is doubtless true, but it simply emphasizes the essential difference between a rate and a toll. Railroads being monopolies authorized by the State to levy and collect rates with direct reference to the value of the article and the service, it is difficult to perceive the difference in principle between this power and that of taxation.

The Interstate Commerce Commission, in one of its annual reports to Congress, declared that railroad property was in a position to tax unjustly all other species of property ; while the great Chief Justice Marshall voiced the great truth, that the power to tax involves the power to destroy.

Upon what principle can be justified the delegation of such transcendental and dangerous powers to other than governmental agencies? What assurance can be had against the abuse of those sovereign privileges when committed into private hands? When did monopoly, enjoying the sanction of authority, ever withhold its hand from oppression, when its own interests seemed to be concerned?

It would seem, then, that the government should withdraw these sovereign powers, and itself directly exercise these public functions, unless there are overwhelming reasons to the contrary.

As obvious as it may seem that transportation is a function of government, it is nevertheless historically true that prior to the advent of the railroads no government appears to have ever engaged in the general business of common carriage. It had always been considered the right and duty of the State to provide highways for travel and traffic ; but even this privilege had sometimes been farmed out, as in the case of canals and toll roads. It had not been regarded as the duty of the State to furnish and operate the instruments of transportation. Perhaps, therefore, the statement that transportation is a governmental function, should be qualified and construed to mean that the furnishing of the means for transportation is the duty of the State, while the use and operation of the facilities provided may be left to private enterprise. It will still remain true that transportation is a public service, intimately affecting the happiness and welfare of the people ; and hence the obligation rests upon the government to see that this service is adequately and efficiently performed, with due regard to the rights of the public. If it should become demonstrated that the railway companies cannot or will not measure up to the standard of this requirement, it may then become the duty of the government to take over the railroads and operate them in the public interest. Whether such an

emergency has arisen or will arise may well admit of differences of opinion.

The fact that the postal service is undoubtedly best performed by the government is illustrative, but by no means conclusive. The analogy between this service and that of general transportation fails at almost every point. In this case the old order is reversed; carriers furnish the facilities for transportation, while the government confines its agency to the conduct of the postal business.

The experience of the European States in the operation of railroads has hardly been sufficient to establish a precedent or furnish a safe guide in the solution of our problem. A number of these States publicly own and operate some of their railways, but none of them exclusively operates all of its railways. There is no extended system even in Germany, as the ownership resides, not in the imperial government, but in its several component States. The railroads of Prussia have proved a good investment from a financial standpoint; but like the other publicly owned German railways, they have not been efficiently operated in the interest of the public, and have been the subject of much political dissension as between the various localities served. In France comparatively few of the railways are directly owned and operated by the government, although a system has been inaugurated under which all of the railway lines will eventually fall under the ownership of the State. Without undertaking to present the situation in detail, it may be sufficient to say that the French government exercises such control over the making of rates as to render even small and desirable changes difficult to be made. Railroad rates in France are further adjusted with reference to tolls and rates on the waterways. All of this results in great rigidity in rates, and destroys liberal and efficient operation. In England the policy has been different. That government has never owned or operated any railroad, but has adopted a system of supervision and control that appears to be very satisfactory, both to the public and to the railway corporations.

In continental Europe, where governmental ownership to a large extent prevails, the conditions are so different from those

obtaining in America as would render a comparison of very little value. Their form of government and administration of its powers is opposed to our theories and practices. The numerous waterways have been so thoroughly developed and widely extended that a very large share of the traffic is, and always will be, carried by water. Traffic is much denser and the average haul is very short. The world-wide competition of commodities, which so greatly affects the American railways, has but little play in Europe. It therefore follows that the success of governmental ownership in Europe would not argue a like result in America; nor would its failure there be necessarily fatal to a like experiment here.

Turning now to the United States, it must be said that public ownership, in so far as it has been indulged in, has been very unsatisfactory. Without undertaking to trace or enumerate these efforts we will consider two prominent instances.

On the 4th day of July, 1836, a convention was held in the city of Knoxville, Tennessee, for the consideration of a proposition for the building of a great trunk line from Cincinnati and Louisville on the Ohio River to some point on the Atlantic coast. This convention was attended by delegates from the states of Ohio, Kentucky, Tennessee, Georgia, North Carolina, and South Carolina. The route selected was from Cincinnati through Knoxville to Charleston, and charters were granted by the several states. For the purpose of connection with this great line, the state of Georgia provided for the building of a railroad with state funds from some point on the Tennessee River to a point on the southeast bank of the Chattahoochee River. The idea was to extend this line by fan-like branches to various points in the state of Georgia, so as to construct a state system of railroads to be owned and operated by the state. The original, or trunk, line was constructed and became the Western & Atlantic Railroad, extending from Atlanta to Chattanooga. In the meantime the state of Tennessee and her citizens were building the Hiwassee Railroad from Knoxville to a point of connection with the railroad proposed by the state of Georgia. This road is now that part of the Southern Railway system extending from Knoxville to Chattanooga.



The Western & Atlantic Railroad was operated by the state of Georgia from its inception until the year 1870. This operation of the road was never profitable to the state, nor satisfactory to the public. It was the constant subject of political controversy, resulting in the selection of operating officials by political favor rather than for their qualifications. Economic considerations were made to yield to political demands; efficiency was sacrificed, and on the whole the experiment, extending over a period of more than a quarter of a century, was a dismal failure. It gave rise in the late sixties to the greatest scandal and the worst corruption that had ever afflicted the state. The people in disgust repudiated further state control, and in 1870 leased the property to a private company for a period of twenty years. This private operation was so much more satisfactory that at the expiration of the term the property was again leased for an additional period of twenty-nine years, and is now being operated by the Nashville, Chattanooga & St. Louis Railway. The net rental received by the state is \$420,000 a year, or something more than \$3,000 a mile; a very neat return upon the value of the investment. This experience would seem to indicate that state ownership may be profitable from a financial standpoint, while public operation has proved an unquestioned failure.

The experience of the city of Cincinnati is very similar. For the purpose of extending its Southern trade, the city undertook the ambitious project of constructing its own railway from Cincinnati to Chattanooga, a distance of 336 miles, over the rough mountain country of Kentucky and Tennessee. This line was constructed at the enormous cost of \$20,500,000, including terminals. It is needless to say that in order to provide this large sum the city greatly burdened itself and incurred large obligations. When the line was opened to traffic there was great rejoicing in Cincinnati, and her merchants and citizens were convinced that the fruit of their daring enterprise would more than repay the burden assumed in its execution. Their optimistic expectations of the benefits of the result to them from the ownership of this great line of railway, extending into the heart of the South, were destined to receive a rude shock. After an unsatisfactory attempt at operation, the line was leased

to the Cincinnati, New Orleans & Texas Pacific Railway Company. This company has for many years maintained freight rates considered by the Cincinnati shippers to be oppressive. Upon their complaint these rates were materially reduced in 1894 by the Interstate Commerce Commission; but this order was set aside by the Supreme Court upon the ground that the Commission then had no power to prescribe rates for the future. After this power had been conferred upon the Commission by the Hepburn Act, the shippers again presented their complaint. The Commission held that the rates asked for would afford a fair return to the railway company, but that in determining the reasonableness of rates between points served by two or more railways, the consideration should not be limited to what would yield a fair return to the most favorably situated line, but that regard should be had to the entire situation, and fair average rates be established. This order of the Commission has recently been concurred in and upheld by the new Court of Commerce. In the dissenting opinion of Judge Archbald, concurred in by Judge Mack, it was asserted that the shipper is entitled to the benefit of rates made with reference to the most favored line, "and is not to be tied down to the unprogressive and outdistanced past."

Whatever may be the law as finally declared by the Supreme Court, the fact remains that shippers continue to pay admittedly excessive rates over the line of this railway between Chattanooga and Cincinnati. It is true that Cincinnati, as the owner of the road, receives five per cent on the value of the investment, representing slightly more than \$3,000 a mile; but this is small compensation for the bitter disappointment of her merchants and shippers.

It thus happens that from Atlanta to Cincinnati there extends a publicly owned line of railway for the entire distance of 475 miles. It is nevertheless true that, while the investment yields a fair financial return to its owners, the shippers are not receiving the slightest benefit by reason of this public ownership.

The deduction from these cases is that while public ownership of railways may be financially profitable, their operation has not been successful, nor is it desirable. The experience of the state

of New York as the owner of the Erie Canal seems to confirm this conclusion. So satisfactory has been ownership without operation that New York is now wisely expending many millions of dollars in the improvement of this great waterway for the public use. It would be difficult to overestimate the economic value of this canal, thus publicly owned and used; and it must be apparent that much of its value would be impaired, if not destroyed, should this means of transportation fall into private possession.

The national government has never owned or operated a railway, so that there is no experience of the past to furnish a guide for the future. Directly or indirectly, through land grants, and the loan of credit, the government has contributed many hundreds of millions of dollars to railway construction by private companies. While the land grants in many instances may have to some extent been justified, the loan of the national credit to transcontinental lines has been the cause of much embarrassment and great scandal, as in the case of the *Credit Mobilier*.

Without extending this discussion I may be permitted to state briefly some of the arguments that oppose ownership and operation of the railways by the national government.

1. The tremendous political power that would inure to the administration is not to be lightly thought of. All experience points to the conclusion that political expediency, rather than the securing of operating efficiency, would largely control in the selection of the superior officers for the railway. These would naturally influence their subordinates in behalf of the political party to which allegiance was due, or from which after favors might be expected. An idea of the tremendous power of such a machine may be grasped when it is remembered that the capital invested in the railways is about six billion dollars, while their annual gross revenues approximate in amount all of the money in circulation. It would be manifestly impossible for any board or department of the government to exercise personal supervision over the conduct of the affairs of all of these railways; and hence the temptation to laxity and corruption among the officials and employees would be very great.

2. All competition would stand in danger of destruction, resulting in schedules of rates, which, however equal theoretically, would practically be too rigid to respond readily to changing conditions and the demands of commerce. Under the present regime competition between markets and commodities is an active and powerful factor in limiting charges and in promoting the transactions of commerce. As between the carriers themselves, while competition in the sense of rate-cutting, rebates, and preferences has been fortunately abolished, there still remains sharp competition between them in the matter of service. These benefits to the public doubtless would not survive governmental operation of the roads. Almost every city and locality considers that it is discriminated against; and the maintenance of the political equilibrium would demand the construction of such schedules as would deprive localities of their natural and acquired advantages, and deny both to private capital and individual enterprise the just fruits of their endeavor. This has been the experience in Germany. The postage stamp theory of rate construction cannot be applied to traffic in general.

3. Government ownership of the railroads would naturally carry with it the acquisition of the telegraph and telephone lines. I am not prepared to say that this in itself might not be beneficial; and I must admit that the operation of the postal service furnishes a precedent for a public service of this character, limited to the transmission of intelligence, and for which a uniform toll might perhaps be required.

The principle of governmental ownership of public utilities, however, being so far established, it would be an easy step for the government to acquire irrigation companies, water power plants, and other public service corporations engaged in a business affecting the general public. Federal creation and control of all large corporations engaged in interstate business would naturally be expected. Why, then, should not the government also control the sources of supply of the great natural products, such as coal, lumber, ores, and oil?

4. It is manifest that the indulgence of this theory leads directly to such a centralization of power, and such a variety of public obligation as violates all of our ideas of the rights and

duties of a representative government. Either socialism or imperialism would be the inevitable outcome. These great utilities, in order to be maintained with any degree of efficiency, must either be operated by and in the interest of the people themselves or by a strong government in the exertion of monarchical powers. The one is socialism; the other imperialism.

The enormous amount of capital required to own, and the vast number of people necessary to operate, these utilities would leave but little for the employment of individual enterprise. The rights and interests of private citizens would be subordinated to those of the large office-holding class.

These considerations impel the conclusion that governmental ownership of the railways is not desirable, but is a consummation devoutly to be avoided.

It remains to be considered whether ultimate governmental ownership is inevitable.

It has been demonstrated that the private operation of railways without legal restraint is not to the benefit of either the carriers or the public. For many years the railway companies were permitted to fix their own charges and indulge their own practices, subject only to the common law rule that the rates should be reasonable. There had been established no tribunal for the determination of what should be considered reasonable as a matter of law, or to prescribe maximum rates for the future. The common law rule against preferences and discriminations was generally and persistently ignored. The officials of the railway companies gave little heed to the public nature of the business, treating railways as the private property of their owners, to be operated and exploited primarily for their benefit. Theoretically the public interest was paramount; practically it was subordinated to the private interest of the owners. Under this system the evils that grew up became intolerable. Numerous states sought relief in the establishment of commissions for the regulations of rates; but as the jurisdiction of such commissions was confined to domestic rates, applying solely within the limits of the particular states, this remedy was not adequate. In 1886 the Act to Regulate Commerce was passed by Congress,

and the Interstate Commerce Commission was established, with jurisdiction over interstate transportation.

The carriers have always resented regulation and interference by the state with the conduct of their affairs, and they resisted this exertion of national authority. While the carriers had derived great benefits from the legislation of Congress on this subject, whenever an order of the Commission was made that did not meet with their approval it was refused obedience, and the effectiveness of the authority of the Commission was materially impaired by stubborn and protracted litigations on the part of the carriers. Recent legislation and late decisions of the Supreme Court have greatly strengthened the hands of the Commission; but the difficulties of regulation are still so great that unless the carriers shall change their attitude, forget their ancient prejudice, and cordially co-operate with the Commission, the ultimate effect of this federal regulation will remain doubtful.

The subject is one of great complexity and difficulty. With respect to their domestic or intra-state rates the carriers are subject to the control of the several states; while as to interstate rates the authority of the national government is both supreme and exclusive. This results in a divided authority, and undoubtedly hampers the freedom of traffic; and at the same time is a constant source of irritation to the carriers. The fact is that all traffic is so related as to constitute one fabric, which cannot be separated for purposes of regulation without an injury to the whole. The task is further complicated because of its great magnitude, and the diversity of conditions existing in various parts of the country.

The Commission now has and exercises the power of prescribing maximum rates for the future; and its administrative regulation of the methods and practices of carriers is being well and effectively exercised. The Supreme Court, however, has declared that the Commission is not the general manager of the railroads, and may not be influenced by consideration of policy that would be permissible to, and controlling upon, the carriers themselves in constructing their rates. That high Court has also very clearly intimated that if the government is to prescribe and limit the charges of common carriers there is implied a

reciprocal obligation to see to it that the carriers obtain a fair return upon the value of their investment. This is an intimation of grave moment, since the proposition if developed would lead to the guarantee by the government of some percentage of return; and in order to make good the guarantee it would be required to exercise such supervision as would be nearly equal to ownership.

As I view the situation I am driven to the conclusion that unless governmental regulation proves itself to be, and is accepted by the public as satisfactory and efficient, the only alternative is governmental ownership.

To meet this situation I have no remedy to offer, and but few suggestions to submit. It seems to me, however, that a nearer approach to the English system would be highly beneficial, if it should be found applicable to conditions existing in the United States. In England no railway is chartered or permitted to be built until after a commission of Parliament has made a thorough examination, and has become satisfied that the construction of the particular road is required in the public interest, and may be operated under reasonable rates at a profit to its owners. When this decision has been reached, all details regarding the construction must be submitted to and approved by the commission of Parliament; and no construction is permitted that does not measure up to the required standard. The regulation and control of the road and of its operation, by the Railway and Canal Commission, is very firm and strict. The highest quality of service is demanded. The English railway company calls for, loads, transports, unloads, and delivers to the consignee at his place of business all freights, whether in single packages or in carload lots. They also maintain at their principal stations large warehouses for the storage of goods of shippers for long periods of time and at a nominal cost. The result is that they furnish the most efficient and economic railway transportation of freight in the world. It has frequently been said, and doubtless the general impression prevails, that the English railroad rates are higher than those of America. This is a misconception. When the short haul and the high character of the service are considered, and when it is remem-

bered that the capital investment per mile in railways is about five times greater than in the United States, it can be understood that in truth the English rates are lower than those obtaining in America.

The suggestion I have is that the English standard of service be adopted, and that the railway companies be required to perform here, as they do there, all of the service pertaining to transportation now rendered by the express companies.

No new railway proposing to engage in interstate traffic, should be permitted to be constructed without the sanction of the government, after an inquiry similar to that conducted by the English Parliament. Existing lines that fall below the established standard should be required to supply the needed betterments. In return for the superior service exacted, the railway companies conforming to the standard should be permitted to make such charges as would in effect guarantee a low, but reasonably fair, return upon the value of the investment.

Railways that cannot afford to render the quality of service demanded should be allowed to meet the fate of the incompetent. There is neither good reason nor sound economy in imposing excessive rates on traffic in order that weak and unprofitable lines may continue to give an indifferent service. The place of small lines in rural districts can now be well supplied by the use of the electric trolley or gasoline motor. The inexorable law that the unfit shall not survive, should be permitted to prevail as well in transportation economics as in nature.

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